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No. 95-1443

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In the Supreme Court of the United States

OCTOBER TERM, 1995

STORK BRABANT B.V. AND
STORK BRABANT, INC.,
Petitioners,

v.

JOSE D'ALMEIDA
and
GERRITSE PROJECTEN AND
ING. GERRITSE B.V.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

BRIEF OF RESPONDENT ING. GERRITSE B.V. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. Statement of the Case

Petitioners' brief fails to address fully certain material facts, and misstates others. Accordingly, respondent Ing. Gerritse B.V. ("Gerritse") sets forth a summary of relevant additional facts

necessary to this Court's review of the pending Petition for Writ of Certiorari.

A. *Procedural History*

This action involves a third-party claim for contribution and indemnity brought by petitioners Stork Brabant B.V. and Stork Brabant, Inc. (collectively "Stork") against Gerritse. Stork is the defendant in a suit in federal district court in Massachusetts brought by an injured plaintiff, Jose D'Almeida. After the District Court endorsed the Magistrate Judge's Report and Recommendation, which found in part that Gerritse was not constitutionally subject to jurisdiction in Stork's action for contribution and indemnity, Stork moved under Fed. R. Civ. P. 54(b) for the entry of a separate and final judgment dismissing its third-party action so that it might immediately appeal the allowance of Gerritse's motion to dismiss. Stork's 54(b) motion was granted by the District Court.

Petitioners note that at one time the tort plaintiff, D'Almeida, sought to amend his complaint in the District Court to include Gerritse as a defendant. This motion was denied. However, D'Almeida has never sought interlocutory review of the District Court's denial of his effort to add Gerritse as an additional defendant, and the First Circuit expressly limited its decision to the issues presented by Stork's claim. Thus the action before this Court is limited to the third-party contribution and indemnity issue between Stork and Gerritse.

B. *Factual Background*

The petitioners correctly state that the relationship between Stork and Gerritse arises out of a contract the parties signed in September of 1975 regarding the manufacture and sale of "calender" machines. (Petition at 7). The contract provided that Gerritse would manufacture the calender machines and sell them

to Stork, which would then undertake to sell the machines to buyers in the Netherlands or internationally. (Petition at 8; App. to Opp. Brief at A1-A11). In order to assess fully the unfairness inherent in allowing Stork to hale Gerritse into a Massachusetts courtroom, however, a few additional facts from the Magistrate Judge's Report are helpful.

Stork and Gerritse signed their 1975 agreement in Boxmeer, The Netherlands. (Petition at A21; App. to Opp. Brief at A11). The contract specified that the governing law relating to all issues arising from the agreement was that of the Netherlands, provided for arbitration in that country of all disputes between the parties, and provided that any disputes not subject to arbitration would be submitted exclusively to the courts of the Netherlands. (Petition at A21-A22; App. to Opp. Brief at A10-A11). The specific contractual language is as follows:

> Article 11 - Applicable law.
>
> 11.1 The agreement shall be governed by the laws of the Netherlands.
>
> 11.2 The Dutch courts shall have exclusive competence in any cases in which a public judicial authority could be involved.
>
> Article 12 - Disputes.
>
> 12.1 Any disputes arising in connection with the agreement or any further agreements arising therefrom, including those which only one of the parties considers to be a dispute, shall be settled by an arbitral award.
>
> 12.2 Such rulings shall be rendered with due application of the arbitration

rules laid down in the Rules of the Netherlands Arbitration Institute.

App. to Opp. Brief at A10-A11.

At the time that the parties entered into the contract in 1975, Gerritse employed six individuals and generated 1.1 million guilders in business. (Petition at A22). In contrast, Stork B.V. employed approximately 23,000 persons and did about 1.9 billion guilders in business. (Petition at A22). Gerritse customarily built and sold the calendering machines for Stork without knowledge of the eventual destination of such machines. Indeed, the calendering machine at issue in the instant case was ordered by Stork in 1983, and built by Gerritse without any knowledge of the location of the eventual purchaser. (Petition at A23). Not until July 2, 1985, after Gerritse had fully completed manufacture and modification of the machine in accordance with Stork's specifications, did Stork inform Gerritse that the machine was to be sent to Massachusetts. (Petition at A24).

II. Reasons For Denying The Writ

THE DECISION OF THE FIRST CIRCUIT IS FULLY IN ACCORD WITH SETTLED LAW REGARDING THE CONSTITUTIONAL LIMITS OF A COURT'S EXERCISE OF PERSONAL JURISDICTION OVER A NON-RESIDENT DEFENDANT, AND NO EXCEPTIONALLY IMPORTANT ISSUE OF LAW IS PRESENTED BY THE PETITION TO WARRANT SUPREME COURT REVIEW.

A. *The Petition Does Not Satisfy Any of the Standards Governing the Grant of a Writ of Certiorari As Set Forth in the Rules of This Court.*

The instant petition seeks review of decisions of the District Court and the First Circuit that are fully in accord with well-established principles of constitutional due process in the

exercise of personal jurisdiction. This Court has indicated the character of the reasons that will be considered in deciding whether to grant a writ of certiorari; this case satisfies none of the following:

> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Sup. Ct. R. 10.1.

The petition in this case identifies no important question of federal law, no split of opinion among the circuit courts, and no deviation by the First Circuit from the established doctrine of this Court. Moreover, even were this Court to choose to revisit or elaborate on its jurisprudence regarding the constitutional limits of personal jurisdiction, the particular factual setting in the instant case, and the limited nature of the First Circuit's holding, make

this action an unsuitable vehicle for doctrinal elaboration. For these reasons and those set forth below, the petition should be denied.

B. *The First Circuit Correctly Ruled That the Assertion of Jurisdiction Over Gerritse In Stork's Action For Indemnification and Contribution Is Unconstitutional.*

The United States Constitution guarantees that any court's exercise of *in personam* jurisdiction over a foreign defendant must comply with due process of law. *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). According to this Court, due process imposes a requirement that the assertion of jurisdiction be "consistent with traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). To assess whether this requirement is met in a particular case, the Court has formulated a five-factor test to access the constitutionality of a court's exercise of personal jurisdiction over an out-of-state defendant. These factors are: (1) the defendant's burden of appearing, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the judicial system's interest in obtaining the most effective resolution of the controversy, and (5) the common interests of all sovereigns in promoting substantive social policies. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

Although the First Circuit in the instant case, presumably because it felt the unfairness of exerting jurisdiction over Gerritse was "reasonably clear" without detailed explanation (Petition at A2), did not apply all of the above five factors to the circumstances of this case, a brief examination of each one confirms that the First Circuit correctly held that personal jurisdiction could not constitutionally extend to Gerritse.

(1) Burden of Appearance

This Court has found that the burdens on a defendant of appearing in a distant forum are entitled to substantial weight in calibrating the jurisdictional scales, and has stated that this element, alone among the five above factors, is "always a primary concern." *World-Wide Volkswagen, supra,* 444 U.S. at 292. In this case, those burdens are extremely heavy. Gerritse's sole place of business is located thousands of miles from Massachusetts, in the Netherlands. It is a small company for whom travel by its personnel to this distant court would be an unreasonable burden. Moreover, the federal district court in Massachusetts employs a different language, and is part of a different legal system, from the home jurisdiction of Gerritse. Indeed, it was precisely to avoid the possibility of such burdens that Gerritse agreed contractually with Stork that the parties would resolve all disputes in the Netherlands. On these facts, therefore, it would be extremely onerous and unfair for Gerritse to be forced to defend against the Stork companies' claims in Massachusetts.

Petitioners seek to obfuscate the heavy burden on Gerritse of appearing in federal court in Massachusetts by exaggerating the connection of an engineer named Ronald Dekens with that jurisdiction. Dekens traveled to the United States in November 1986 at the direction of Stork to visit two of Stork's customers in New Jersey and Pennsylvania. (Petition at A24). While in the U.S., Dekens made a brief stopover (one day) in Massachusetts at the behest of Stork to examine the Shawmut Mills machine. This scant one day visit is the only contact Gerritse has ever had with the Massachusetts forum. (Petition at A25). Moreover, irrespective of the weight given to the Dekens visit, petitioners' invocation of it in support of a "minimum contacts" theory is misplaced, since the First Circuit's opinion expressly found it unnecessary to address the issue of minimum contacts.

(2) Interest of Forum

Massachusetts has little or no interest in the outcome of the Stork companies' dispute with Gerritse. Gerritse does not regularly do business in or maintain contacts with Massachusetts, and its transfer of the machine in question to the Stork companies was "an isolated transaction, with slight effect on the commerce of the Commonwealth." *Droukas v. Divers Training Academy, Inc.*, 375 Mass. 149, 154, 376 N.E.2d 548, 551 (1978). Moreover, the Stork companies are not Massachusetts residents, and their claims against Gerritse are for indemnification or contribution with respect to alleged acts or omissions in the Netherlands. Thus, for the same reasons set forth by this Court in *Asahi Metal Industry Co., Ltd. v. Superior Court,* Massachusetts' "legitimate interests in the dispute [are] considerably diminished." 480 U.S. 102, 114 (1987).

The petitioners advance two separate arguments regarding the interest of Massachusetts in its claim for indemnification and contribution, both of which are undermined upon closer scrutiny. First, petitioners attack the First Circuit's finding that "Massachusetts' interest in the indemnification and contribution dispute [is] extremely limited . . ." (Petition at A3), claiming instead that Massachusetts has an interest in furthering the "fundamental social policies" embodied in the state's statutory contribution scheme. (Petition at 17-18). But as the petitioners' own authority suggests, the contribution statute is primarily intended to promote an equitable relationship between joint tortfeasors. As the Massachusetts Supreme Judicial Court found, "[t]he object to be accomplished [by the contribution statute] is a more equitable distribution of [the] burden among those liable in tort for the same injury." *McGrath v. Stanley*, 397 Mass. 775, 780-81, 493 N.E.2d 832, 835 (1986) (cited in Petition at 18-19). Given this limited legislative concern, it is doubtful that Massachusetts has any significant interest in the resolution of this dispute. Both Stork and Gerritse are incorporated in the

Netherlands, and contractually agreed to resolve all disputes in the mutually familiar forum of their country of residence. It is settled law that courts should abide by a forum selection agreement to which the parties to a dispute agreed before the dispute arose. *See, e.g., The Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 10 (1972) (forum selection clauses "are prima facie valid and should be enforced unless enforcement is shown by the resisting party to be 'unenforceable' under the circumstances."); *Lambert v. Kysar*, 983 F.2d 1110, 1116 (1st Cir. 1993) (forum selection clause enforced). Because the very Massachusetts statute on which petitioners rely has as its primary motivation the equitable relation between joint tortfeasors, even this limited forum state interest supports the inherent fairness of requiring the parties to litigate their dispute in the consensually selected forum of the Netherlands.

Perhaps recognizing the extremely limited nature of Massachusetts' interest in the contribution and indemnity action alone, petitioners seek to inject the interests of the original plaintiff in the District Court tort action, D'Almeida, into the more limited matter before this Court. (Petition at 19-20). The dispute that the First Circuit ruled on, and that is now before this Court, is solely an action for contribution and indemnity between Stork and Gerritse, and the First Circuit took explicit note of that fact in ruling as it did. (Petition at A3).

Although the plaintiff D'Almeida at one point unsuccessfully sought to amend its complaint and add Gerritse as an additional defendant, D'Almeida to date has declined to seek appellate review of the District Court's denial of such amendment. Should D'Almeida in the future ever choose to appeal the District Court's denial of his attempt to add Gerritse as a defendant, the narrowly tailored holding of the First Circuit in this action will not limit D'Almeida on appeal. Indeed, the First Circuit carefully limited its holding below to the particular factual background and procedural setting of the contribution and indemnity action

between Stork and Gerritse, cautioning that its analysis would be different if the D'Almeida were a party involved in the appeal. (Petition at A2). Because D'Almeida's interests are not implicated in the instant action before this Court, petitioners' invocation of D'Almeida's interests for their own purposes is misplaced.

(3) Plaintiff's Convenience

It is settled doctrine that "courts considering jurisdictional issues generally should 'accord plaintiff's choice of forum a degree of deference in respect to the issue of its own convenience.'" *Foster-Miller, Inc. v. Babcock & Wilcox Canada,* 46 F.3d 138, 151 (1st Cir. 1995) (quoting *Ticketmaster-New York, Inc. v. Alioto,* 26 F.3d 201, 211 (1st Cir. 1994)). In this case, the Stork companies chose the Netherlands as their preferred forum for resolving all disputes with Gerritse, expressly setting that choice forth in a written and binding contract.

Moreover, courts have made clear that they will look to the objective realities of convenience, and not solely to the plaintiff's assertions. *Ticketmaster*, *supra*, 26 F.3d at 211. Here, the realities are that the relevant witnesses are in the Netherlands, and speak Dutch. Likewise the relevant documents are in Dutch, and are located in the Netherlands. The relevant objective circumstances cause this factor to weigh against finding that it would be reasonable to proceed in Massachusetts.

(4) Administration of Justice

Petitioners suggest that forcing Gerritse into the Massachusetts forum would promote the efficient administration of justice by having all claims tried together in a single forum. (Petition at 16-17). Yet it is far from clear that the assertion of personal jurisdiction over Gerritse by the District Court of Massachusetts would promote the efficient resolution of the

dispute between Stork and Gerritse. Under the parties' contract, all disputes must be resolved by arbitration, or by litigation, and in either case in the Netherlands. (App. to Opp. Brief at A10-A11). To subject Gerritse to suit in Massachusetts would therefore lead to parallel adjudication proceeding before two distant tribunals. The inefficiency and potential for inconsistent judgments inherent in such a scenario weighs against the exercise of federal court jurisdiction over Gerritse in this case.

(5) Policy Concerns

This Court has noted that special policy concerns attach when courts in the United States consider extending their jurisdiction to foreign defendants in other nations. As the Court stated in *Asahi*:

> [Courts must] consider the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by [a state's] court. The procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal Government's interest in its foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State. "Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field."

Asahi, *supra*, 480 U.S. at 115 (quoting *United States* v. *First National City Bank*, 379 U.S. 378, 404 (1965)) (emphasis in

original); see also 9 U.S.C. §§201 et seq. (United States committed by treaty to honor foreign arbitrations). In according due deference to the interests of the Netherlands, the Court should take into account that nation's interest in protecting its citizens from burdensome foreign litigation. Accordingly, public policy considerations of every sovereign involved weigh heavily against the imposition of jurisdiction here.

Considered together, the five factors enumerated above confirm the wisdom of the First Circuit's holding that the extension of jurisdiction over Gerritse would offend the constitutional requirement of "fair play and substantial justice." Gerritse is a small manufacturer in a single Dutch town that entered into a contract with a large company also resident in the Netherlands. The petitioners now seek the intervention of this Court in order to force Gerritse into a Massachusetts courtroom thousands of miles from its home country -- not at the behest of an injured Massachusetts citizen, but on the pleading of a compatriot corporation with whom Gerritse had entered into a contract on Dutch soil. This contract contained a forum selection clause in favor of the Netherlands. As the First Circuit held, the inherent unfairness of haling Gerritse into a Massachusetts court to defend Stork's contribution and indemnity action precludes the constitutional exercise of personal jurisdiction in this case.

C. *Conclusion*

For the forgoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

Translated text of agreement dated September 1, 1975, between Stork Brabant B.V. and Gerritse Projecten, submitted as part of Record before the First Circuit Court of Appeals.

SWORN TRANSLATION

"AGREEMENT

the private company with limited liability, "Stork-Brabant B.V." residing in Boxmeer (Noord-Brabant), the Netherlands, at no 43a, Wim de Korverstraat, hereafter to be referred to as: 'Stork', party of the first part;

and

"Gerritse Projecten", residing in Brummen, the Netherlands, at no. 17, Mercuriusweg, hereafter to be referred to as: 'Gerritse', party of the second part;

whereas:

Gerritse has developed a paper wrapping machine and a calendering machine for a vapor-phase transfer printing process. These machines shall be specified in further detail below.

Stork produces a range of machines for the textiles industry and sells these on the international market. The machines described above are compatible with that range, and Stork therefore wishes to include these machines in its sales program on an exclusive basis;

Gerritse is willing to complete the development of the machines in collaboration with Stork and to grant Stork the exclusive right to sell these machines. Stork hereby accepts this sales right, so that

the parties have laid down their collaboration and agreement in the following terms and conditions.

Article 1 - Subject

1.1 The parties shall cooperate in:
- developing calendering machines
- producing calendering machines

in the sense that Stork shall assume exclusive responsibility for the sale of the calendering machines in its own name and for its own account and risk.

1.2 The parties have agreed on the following distribution of tasks in respect of the production of the calendering machines;
Gerritse shall produce calendering machines with a transfer cylinder of up to 700 millimetres in diameter, hereafter to be referred to as: 'the A-calenders'.

1.3 Stork shall purchase the A-calenders exclusively from Gerritse and the latter shall sell these calendering machines exclusively to Stork. Stork shall itself produce any special type of calendering machines which a buyer may order and which are not included in either party's production program or shall order these from third parties.

1.4 The A-calender is characterized by the following general description:
A transfer calender for transferring colors from a carrier onto textile according to a vapor phase process, consisting of a frame with:

- an electrically-heated transfer cylinder with temperature control,
- a pressure strip with pressure adjustment and control,

- winding and unwinding facilities with spindles for:
  - transfer paper,
  - textiles and
  - protective paper
- a drive with speed control.

Article 2

2.1 Gerritse has developed a paper wrapping machine which Stork intends to include in its sales program in combination with the calendering machines.

2.2 Stork shall purchase the paper wrapping machines exclusively from Gerritse, and Gerritse shall sell these paper wrapping machines exclusively to Stork. Stork shall itself produce any special designs not included in Gerritse's production program, or shall order them from third parties.

2.3 The wrapping machine referred to above in 2.1 is characterized by the following general description:

A paper wrapping machine for wrapping, for monitoring the printed transfer paper and for cutting it into longitudinal segments, consisting of a frame with:

- an electrically-operated transversely-controlled unwinding frame for steering the paper track, with paper track tension control
- a longitudinal cutting section
- a viewing and cutting area
- a winding facility with spindles for approved and rejected paper
- a drive with speed control
- no facility for rewinding the paper

Article 3 - Stork's obligations

3.1 Stork shall, for its own account and risk, purchase the A-calenders and the paper wrapping machines from Gerritse, shall immediately include them in its sales program and sell them or, as the case may be, have them sold on the international market.

3.2 In doing so, Stork intends to ensure a certain degree of continuity in respect of the turnover in this field, which it shall attempt to achieve with all the specialized knowledge of the market which it has at its disposal.

3.3 Stork shall not request Gerritse's support for its commercials and/or service activities in undertaking the above, unless it should consider this necessary for developing the machines.

3.4 Stork shall order the A-calenders in series of ten, and the wrapping machines in series of five.

3.5 The prices, which shall not include Value Added Tax, shall be as follows until 1 January 1976:

- thirty-six thousand Dutch guilders (NLG 36,000) per TC-101 transfer calendering machine, and
- twenty-nine thousand, one hundred and eighty Dutch guilders (NLG 29,180) per TR-101 wrapping machine,

and the agreed terms of delivery shall be ex factory Brummen, excluding packaging.

3.6 Stork has ordered a first series of both types of machine before signing the present agreement, and the following payment schedule has been stipulated in respect of this order: fifty (50) percent upon ordering and fifty (50) percent within 30 days of delivery.

3.7 The parties shall review the prices and terms of payment every six months by joint consent.

3.8 Stork undertakes to place orders for a sum of at least one million and fifty thousand Dutch guilders (NLG 1,050,000) in the first two years of the agreement, viz. in the period between September 1, 1975 and September 1, 1976 and between September 1, 1976 and September 1, 1977.

3.9 If Stork should fail to realize this turnover on Gerritse's behalf, Stork shall be entitled to compensate its obligations by placing orders with Gerritse or in cash. If Stork should pay this compensation in cash, it shall pay Gerritse fifteen (15) percent of the turnover lost. If Stork should opt for compensating Gerritse by placing orders, it must do so to a sum which is at least equal to the turnover lost. If Stork should provide materials as well as the complete working drawings and specifications which it is required to provide at all times, the compensation shall consist of orders with a value of at least seventy (70) percent of the turnover lost.

3.10 Stork shall take over the service and warranty on the machine supplied.

3.11 Stork shall pass on to Gerritse any information which it obtains from and on the market for these machines, both in general and in respect of these machines, and shall provide Gerritse with any technical and technological support which is in reason possible for developing and modifying the machines to bring them into line with the market needs.

Article 4 - Gerritse's obligations

4.1 Gerritse shall continue to develop the A-calenders and wrapping machines and, in doing so, shall be guided by

the needs and demands of the market, of which Stork shall keep Gerritse informed.

4.2 Gerritse hereby grants Stork the exclusive sales rights for the A-calenders.

4.3 Although Stork has taken over all the service and warranties under the terms of section 3.11 above, Gerritse shall continue to warrant the machines' proper operation and defect-free materials, and shall furthermore provide all the spare parts necessary for complying with the warranty obligations to Stork free of charge. This warranty shall be valid for a period of six months after the machines are commissioned, with a maximum however of twelve months from the agreed delivery date. The pressure strip shall be excluded from Gerritse's warranty obligations.

4.4 If Stork so wishes, Gerritse shall continue to supply spare parts for its machines at normal prices and under normal terms for a period of five years after the machines have been supplied, even after the agreement has been terminated.

4.5 Gerritse shall keep a reserve stock of spare parts for any parts which Stork may require pursuant to the above, and as additional security for Stork's service obligations. Gerritse and Stork shall agree on this stock by joint consent.

4.6 Stork is aware of the fact that Gerritse will be obliged to contract out seventy to eighty percent of its work. Stork shall not object thereto at any future date, without prejudice to the following:

Gerritse shall ensure that its contracting policies protect Stork's interests, such as ensuring the continuity of the

quality, the delivery period, and that the work is allocated in such a way as to safeguard the exclusive nature of the present agreement.

4.7 If Gerritse should develop machines other than those covered by the present agreement, but which are in line with Stork's sales program, Gerritse shall offer these newly-developed machines to Stork, and shall not enter into any agreement such as the present with any third party before having given Stork the opportunity to give its opinion on the expansion of the present agreement to include the newly-developed machines.

4.8 Gerritse shall make all drawings and technical specifications necessary for drawing up company regulations and parts lists available to Stork.

Article 5 - Term of the agreement

5.1 The present agreement has been entered into for a period of three years commencing on September 1, 1975.

5.2 This period shall be automatically extended by one year unless one of the parties has notified the other of the termination of the agreement by registered letter at least six months before the expiry of the contract period or a contract year.

5.3 If Stork should terminate the agreement lawfully pursuant to this section, it shall, for a period of two years, refrain from producing these calendering machines itself or purchasing them from third parties, as long as Gerritse continues to supply Stork under normal conditions.

Section 6 - Interim termination

6.1 Aside from the provisions of article 5 above, the agreement may be terminated only with both parties' consent.

6.2 However, if one of the parties should be declared bankrupt or go into involuntary liquidation, should file for a moratorium of payments, offer its creditors a private settlement, be placed under a legal restraint or if its powers should be similarly restricted, and in the event of liquidation, the agreement shall be immediately terminated in respect of that party by a notice of termination issued by the other party by registered letter or process-server's writ.

6.3 If any of the events described above should occur to Gerritse, it shall immediately make available to Stork all the drawings and specifications for the machines which Stork may need to complete current orders in a production process under Stork's direction.

6.4 Articles 6.2 and 6.3 shall also be applicable if either party should seriously default in complying with its obligations pursuant to the agreement after having been properly notified of its default. If there should be grounds therefor, the defaultor may be liable to pay damages.

Article 7 - Mutual indemnification

7.1 In accordance with the purport of the agreement, Stork shall indemnify Gerritse against and hold it harmless from all the risks of loss or damage, unless such failure should have been caused by factors for which Gerritse is required to accept liability on the grounds of its obligation to observe due care as the machines' producer and designer,

even if the damage was caused by Gerritse's acts or omissions, and for which Gerritse cannot in reason expect Stork to accept full or partial liability or to bear the consequences thereof in whole or in part.

Article 8 - Confidentiality

8.1 During the term of this agreement, the parties shall make use of all their know-how, experience, technical data, information and other data, to the extent these are not, by their nature, intended for public disclosure, exclusively for the performance of this agreement. The parties shall otherwise observe confidentiality in respect of any aspects of each other's business activities with which they may become acquainted in the course of the present collaboration.

8.2 If either party should need to provide suppliers, customers or other third parties with such information, they also shall ensure that this information is only made available for the specific purpose of the present agreement.

8.3 The obligation to observe confidentiality vis-à-vis third parties shall remain effective after the termination of the present agreement.

8.4 If either party should act in breach of the above provisions of this section, it shall forfeit an immediately payable penalty of one hundred thousand Dutch guilders (NLG 100,000) in favour of the other party as a result of the mere fact of such a breach.

Article 9 - Patents

9.1 If either party should make an invention in connection with the present machines or in connection with their design or technology, it shall be at liberty to apply for a patent itself.

9.2 The parties however explicitly agree that they shall under no circumstances whatsoever use the patent obtained in this way against the other party, and the other party shall on the contrary obtain a free right of use.

9.3 If a third party should sue either of the parties on the grounds of the infringement of a patent belonging to a third party (which is unlikely), the parties shall consult each other on the action to be taken, and such proceedings shall be conducted by the most appropriate party.

Article 10 - The assignment of rights and obligations

10.1 Either party shall be able to assign their rights and obligations only if the other party has granted its prior written permission thereto.

10.2 Stork shall however be authorized to have these calendering machines produced by its companies or licence-holders outside the Netherlands in return for a consideration to be paid to Gerritse, to be fixed as the need arises. If market policies should dictate that such local production is desirable elsewhere in the world, Gerritse shall cooperate in implementing such a decision in every way.

Article 11 - Applicable law

11.1 The agreement shall be governed by the laws of the Netherlands.

11.2 The Dutch courts shall have exclusive competence in any cases in which a public judicial authority could be involved.

Article 12 - Disputes

12.1 Any disputes arising in connection with the agreement or any further agreements arising therefrom, including those which only one of the parties considers to be a dispute, shall be settled by an arbitral award.

12.2 Such rulings shall be rendered with due application of the arbitration rules laid down in the Rules of the Netherlands Arbitration Institute.

Article 13 - Liability for affiliated companies

13.1 The parties warrant that legal persons and business enterprises in which the parties must be considered to have sufficient control, shall observe the obligations under the agreement. Non-compliance by such legal persons or business enterprises shall be considered to constitute non-compliance by the party concerned.

Thus agreed and signed in duplicate in Boxmeer, September 1, 1975

On behalf of Gerritse Projekten	On behalf of Stork Brabant B.V."
[illegible signature]	[illegible signature]